

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: September 15, 2004

Division: Growth Management

Bulk Item: Yes X No

Department: Planning

AGENDA ITEM WORDING:

Public hearing to repeal BOCC Ordinance 10-2004 due to a scrivener's error and amend Section 9.5-122.3; Section 9.5-124.8; and Section 9.5-266, of the Monroe County Land Development Regulations, in order to grant authority to the Growth Management Director and County Attorney to approve Restrictive Covenants and Warranty Deeds.

ITEM BACKGROUND:

This item was heard at the April 21, 2004 BOCC meeting and was approved. However, a scrivener's error erroneously identified Section 9.5-266 (f) as 9.5-266 (b) in the approved Ordinance 010-2004 and the BOCC staff report. A new ordinance has been drafted to correct the scrivener's error.

PREVIOUS RELEVANT BOARD ACTION: BOCC Ordinance 10-2004

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATION: Approve

TOTAL COST: NA **BUDGETED:** Yes No

COST TO COUNTY: NA **SOURCE OF FUNDS:** NA

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **YEAR**

APPROVED BY: County Attorney X OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL: 
Timothy J. McGarry, AICP

DOCUMENTATION: Included X To follow Not required

DISPOSITION: **AGENDA ITEM #** 51



BOCC ORDINANCE

ORDINANCE NO. -2004

AN ORDINANCE AMENDING SEC. 9.5-122.3; SEC.9.5-124.8; SEC. 9.5-266 OF THE MONROE COUNTY LAND DEVELOPMENT REGULATIONS IN ORDER TO GRANT AUTHORITY TO THE GROWTH MANAGEMENT DIRECTOR AND THE COUNTY ATTORNEY TO APPROVE RESTRICTIVE COVENANTS AND WARRANTY DEEDS UNDER ROGO/NROGO AND AFFORDABLE HOUSING. PROVIDING FOR REPEAL OF ALL ORDINANCES INCONSISTENT HEREWITH; PROVIDING FOR INCORPORATION INTO THE MONROE COUNTY CODE OF ORDINANCES; AND DIRECTING THE PLANNING DIRECTOR TO FORWARD A CERTIFIED COPY OF THIS ORDINANCE TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, presently, all restrictive covenants for Affordable Housing, warranty deeds for land dedication, restrictive covenants permitting only single-family dwellings on a parcel of land, or, in a few cases, the removal of these restrictive covenants require approval by the Board of County Commissioners before any development may receive a building permit; and

WHEREAS, in 2003, there were approximately 80 such agreements; and

WHEREAS, all were legally advertised for BOCC regular meetings, and all were formally presented to the commission for approval as Bulk Items; and

WHEREAS, after approval, each agreement is recorded in the office of the County Clerk; and

WHEREAS, the commission has approved all of these agreements; none have ever been disapproved; and

WHEREAS, this process has existed since the inception of ROGO; and

WHEREAS, the formality of this process is unnecessarily time-consuming for the applicant, for staff and for the commission; and

WHEREAS, it is proposed that each of these actions be approved by the Growth Management Director and the County Attorney, and then recorded in the office of the County Clerk; and

WHEREAS, Staff finds that the proposed change is consistent with Section 9.5-511(d)(5) b. (iv) New Issues and (v) Recognition of a need for additional detail or comprehensiveness; and

WHEREAS, The Monroe County Board of County Commissioners finds that the proposed change is consistent with the goals of the Monroe County Year 2010 Comprehensive Plan; and

WHEREAS, this text change was reviewed and **APPROVED** at the DRC public meeting of January 15, 2004; and

WHEREAS, this text change was reviewed and **APPROVED** at the PC public hearing of January 28, 2004 and **APPROVED** at the public hearing of February 11, 2004;

WHEREAS, The Board of County Commissioners at their meeting of April 21, 2004 in Key West, Florida reviewed the proposed amendment to Sections 9.5-122.3; Sec. 9.5.124.8; & Sec. 9.5-26 as recommended by the Planning Commission and Growth Management.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

strike though text is deleted. <u>underlined text</u> is new.
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Section 1.

Section 9.5-122.3 Evaluation criteria

(a)(3) *Lot aggregation:*

Additional requirements:

1. Points will not be awarded for lot aggregation within those areas proposed for acquisition by governmental agencies for the purpose of resource protection.
2. The application shall include but not be limited to the following:
 - ~~1,~~ An affidavit of ownership of all affected parcels, acreage or land; and
 - ~~2,~~ A Legally binding restrictive covenant limiting the number of dwelling units on the acreage tract, running in favor of Monroe County and enforceable by the County, subject to shall be approved by the approval of the board of county commissioners Growth Management Director and County Attorney and recorded prior to filing in the office of the County Clerk ~~Such covenant must be approved by the board prior to the issuance of before any development approval or may be issued building permit, pursuant to an allocation award.~~

(a)(4) Acreage tract density reduction:

Additional requirements:

1. The parcel proposed for development must be located in zoning districts in which density is allocated in residential units per acre.
2. The application shall include but not be limited to the following:
 - An affidavit of ownership of the affected parcel, acreage or land;
 - A Legally binding restrictive covenant limiting the number of dwelling units on the acreage tract, running in favor of Monroe County and enforceable by the

County, ~~subject to~~ shall be approved by the ~~approval of the board of county commissioners~~ Growth Management Director, County Attorney and recorded ~~prior to filing~~ in the Monroe County Clerk's Office, ~~Such covenant must be approved by the board prior to the issuance of before any development approval or may be issued~~ building permit, pursuant to an allocation award.

(a)(5) *Land dedication:*

Additional requirements:

1. "Buildable" means construction of a dwelling unit or some development could be permitted, as determined by the ~~environment resources director~~ Director of Planning.
2. The application shall include but not be limited to the following:
 - An affidavit of ownership of all affected lots, parcels, acreage or land;
 - A statutory warranty deed that conveys the dedicated property to the County shall be approved by the, subject to the approval of the board of county commissioners Growth Management Director, County Attorney and recorded ~~prior to filing~~ in the office of the County Clerk, ~~which conveys the dedicated property to the county. Such deed must be approved by the board prior to the issuance of before any development approval~~ building permit ~~may be issued~~ pursuant to an allocation award.

Section 2.

Sec. 9.5-124.8 Evaluation criteria

(a)(2) *Intensity reduction:*

Additional requirements:

A legally binding restrictive covenant running in favor of Monroe County that limits the floor area ratio of the property to a maximum of twenty three percent (23%) for a period of ten (10) years shall be approved by the ~~Board of County Commissioners~~ Growth Management Director, County Attorney and recorded prior to the issuance of any building permit pursuant to an allocation award.

(a)(3) *Land dedication:*

Additional requirements:

1. "Buildable" shall mean construction of a dwelling unit or non-residential development, as determined by the planning director.
2. The application shall include but not be limited to the following:

- An affidavit of ownership of all affected lots, parcels, acreage or land;
- A statutory warranty deed that conveys the dedicated property to the county shall be approved by the, subject to the approval of the board of county commissioners Growth Management Director, County Attorney and recorded prior to filing in the office of the Clerk of the County, which conveys the dedicated property to the county. Such deed must be approved by the board prior to the issuance of before any development approval building permit may be issued pursuant to an allocation award.

Section 3.

Sec. 9.5-266. Affordable and employee housing; administration.

~~(b)~~ (f) *Administration and compliance:*

(7)The restrictive covenants for affordable and employee housing required under this section shall be approved by the Growth Management Director and County Attorney prior to the recording of the covenant and issuance of any building permit.

- Section 4.** If any section, subsection, sentence, clause, item, change, or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such validity.
- Section 5.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of said conflict.
- Section 7.** This ordinance shall be filed in the Office of the Secretary of State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance.
- Section 8.** This ordinance shall be transmitted by the Planning Department to the Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes.

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PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ day of _____, A.D., 2004.

Mayor Murray Nelson

Mayor Pro Tem David P. Rice

Commissioner Charles "Sonny" McCoy

Commissioner George Neugent

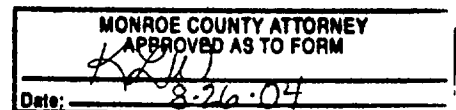
Commissioner Dixie Spehar

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY

Mayor Murray Nelson

(SEAL)



ATTEST: DANNY KOHLAGE, CLERK

DEPUTY CLERK

BOCC Staff Report

MEMORANDUM

TO: The Monroe County Board of County Commissioners

FROM: K. Marlene Conaway, Director of Planning

DATE: August 26, 2004

MEETING DATE: September 15, 2004

RE: **Repeal of BOCC Ordinance 10-2004 due to a scrivener's error and new ordinance to amend Sec. 9.5-122.3; Sec. 9.5-124.8; and Sec. 9.5-266 of the Monroe County Land Development Regulations in order to grant authority to the Growth Management Director and County Attorney to approve Restrictive Covenants and Warranty Deeds under ROGO/NROGO and Affordable Housing.**

I. BACKGROUND.

Ordinance 010-2004, granting to the Director of Growth Management and the County Attorney the authority to approve Restrictive Covenants and Warranty Deeds, contained a scrivener's error. Specifically, the Ordinance and staff report erroneously indicated Section 9.5-266 (b) instead of Section 9.5-266 (f). This is being corrected by repealing Ordinance 10-2004 and replacing it with a new ordinance with the scrivener's error removed.

II. ANALYSIS.

Ordinance 010-2004 was found to contain a scrivener's error that did not affect the textual content of the ordinance. Ordinance 010-2004 followed all due process for review pursuant to Section 9.5-511 including Development Review Committee, Planning Commission, Board of County Commissioners and the Department of Community Affairs. At each stage of the process the ordinance was found to be consistent with all applicable goals, policies and objectives of the Monroe County Year 2010 Comprehensive Plan as well as Florida Statutes and Florida Administrative Code. The correction of the above-noted scrivener's error does not alter the content of the approved ordinance, rather clarifies the appropriate subsection designation of (f) rather than (b) for Section 9.5-266 of the ordinance. This correction is consistent with the criteria established in Section 9.5-511 (e), MCC.

III. FINDINGS OF FACT.

1. A text amendment to Section 9.5-122.3; Section 9.5-124.8; and Section 9.5-266 of the Monroe County Land Development Regulations was adopted by the Board of County Commissioners that contained a scrivener's error.
2. Section 9.5-511(e) provides a mechanism to amend such scrivener's errors.

3. Staff finds this amendment to be consistent with the criteria listed in Section 9.5-511(e).
4. Staff finds that the correction of the scrivener's error does not alter the textual content of the approved ordinance.
5. Staff finds the proposed changes to be consistent with the goals, objectives, and policies of the Monroe County Year 2010 Comprehensive Plan.
6. Staff finds the proposed changes consistent with F.A.C. Chapters 9J-5 and 9J-12, Florida Statutes, Chapter 163, and The Principles for Guiding Development.

IV. PROPOSED TEXT

The new changes are shown in ~~strike through~~ and underline format.

Section 3.

Sec. 9.5-266. Affordable and employee housing; administration.

~~(b)~~ (f) Administration and compliance:

(7) The restrictive covenants for affordable and employee housing required under this section shall be approved by the Growth Management Director and County Attorney prior to the recording of the covenant and issuance of a building permit.

V. RECOMMENDATION:

The Growth Management Staff recommends **APPROVAL** of the proposed repeal of BOCC Ordinance 10-2004 and the proposed replacement ordinance to correct a scrivener's error in Ordinance 010-2004.